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SB

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/174,868 10/19/98 MUSACCHIA J 14359-016

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EXAMINER

CEGIELNIK, U

ART UNIT

PAPER NUMBER

3712

DATE MAILED:

09/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/174,868

Applicant(s)

MUSACCHIA, JOHN

Examiner

Urszula M. Cegielnik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-9 and 14-18 is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 10, and 11 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 4, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bowes.

Bowes discloses a hunting device for producing sounds comprising a game call having a scratch surface (42) separated from a sound emanating surface (43); the sound emanating surface having apertures (52); an elevating device (40) elevating the sound emanating surface of said game call as recited in claim 1; a body attachment assembly (Figure 2) as set forth in claims 1 and 10; said elevating device comprises legs (skirt 44) each having a first end (upper portion of skirt 44) and a second end lower portion of skirt 44); said first ends of said legs are attached to said game call and said second ends of said legs are designed to contact the body of a user as set forth in claim 3; said elevating device comprises a platform (40) having a top surface and a bottom surface, said platform supporting said game call; and legs depending from said platform, each said leg having a first end and a second end, wherein said first end of each said leg is in contact with said platform; and wherein said second end of each said leg is designed to contact the body of a user as set forth in claim 4, and the sound emanating surface designed to be separated a distance from a hunter by legs ends as

recited in claim 10. As is readily apparent the game call and elevating device of Bowes are "one piece".

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowes in view of Official Notice hereby taken that game calls with a rectangular platform and legs are well known devices for calling game. Bowes discloses most of the features of the invention except for the platform of the hunting device being substantially rectangular and including front and rear legs extending from said bottom surface of said platform. It would have been obvious in view of Official Notice to construct the platform of Bowes to have a rectangular shape for the purpose of making the device of Bowes more comfortable to wear with the platform portion being lengthwise aligned with the body portion so it won't snag on an object when a person is moving.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowes. Bowes discloses most of the features of the invention including a tether (col. 3, lines 31-32) and a striker (14).

Bowes does not show the opposing end of the tether being attached to the game call. It would have been obvious to one of ordinary skill in the art to modify the device of

Bowes to attach the tether to the game call for the purpose of making the game call more portable.

Allowable Subject Matter

Claims 6-9 and 14-18 are allowed.

Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 5 July 2001 have been fully considered but they are not persuasive.

Applicant argues that Bowes as applied to claims 1-4 does not anticipate every element of the claims. Specifically, the applicant asserts that the invention requires the legs to provide "an unencumbered path for sound to escape the game call".

The examiner respectfully disagrees with the applicant's contention that Bowes does not teach legs providing an unencumbered path. Bowes clearly shows legs (upper portion of skirt 44) providing an unencumbered path (sound chamber 43).

Furthermore, the applicant asserts that the skirt 44 of Bowes cannot be considered a leg because the definition of a leg according to the applicant is "a pole or bar serving as a support or prop". The examiner submits that the definition as presented by the applicant is not the sole definition by which the limitation "leg:" may be interpreted within the claims. The definition of a "leg" can be much broader in that a leg may be "a supporting part similar to a leg in shape or function" *Webster's II New*

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Riverside University Dictionary (1984). Thus, a leg is not confined to just being a pole or bar. As such, the requirement in the claims for legs can clearly be read on portions of the skirt of Bowes.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 8:30AM - 5:00PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jacob K. Ackun can be reached on 703-308-3867. The fax phone numbers

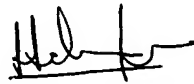
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for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Urszula M. Cegielnik
Examiner
Art Unit 3712

August 30, 2001



JACOB K. ACKUN, JR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700